

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill Nos. 116 & 316, Section 32.383, Pages 6-7,  
2 Lines 13, 20, 24, 26, 32, 34, 36, 39, 42, and 43-44, by inserting the words, "subsections 1 through  
3 8 of" before the words, "this section"; and

4  
5 Further amend said bill, section, Page 7, Line 45, by deleting the words, "This section" and  
6 inserting in lieu thereof the words, "Subsections 1 through 8 of this section"; and

7  
8 Further amend said bill, section, Page 7, Line 49, by inserting after all of said line the following:

9 "9. This subsection shall be known as the "Public Fraud Prevention Act".

10 (1) As used in this subsection the following terms shall mean:

11 (a) "Claim", includes any request or demand, whether under a contract or otherwise, for  
12 money or property and whether or not the state has title to the money or property, that:

13 (i) Is presented to an officer, employee, or agent of the state; or

14 (ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be  
15 spent or used on the state's behalf or to advance a state program or interest, and if the state:

16 i. Provides or has provided any of the money or property requested or demanded; or

17 ii Will reimburse such contractor, grantee, or other recipient for any portion of the money  
18 or property which is requested or demanded; and

19 (iii) Does not include requests or demands for money or property that the state has paid to  
20 an individual as compensation for state employment or as an income subsidy with no restrictions  
21 on that individual's use of the money or property;

22 (b) "Knowing" or "knowingly", that a person, with respect to information:

23 (i) Has actual knowledge of the information;

24 (ii) Acts in deliberate ignorance of the truth or falsity of the information; or

25 (iii) Acts in reckless disregard of the truth or falsity of the information;

26  
27 and requires no proof of specific intent to defraud;

28 (c) "Material", having a natural tendency to influence, or be capable of influencing, the

1 payment or receipt of money or property;

2 (d) "Obligation", an established duty, whether or not fixed, arising from an express or  
3 implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar  
4 relationship, from statute or regulation, or from the retention of any overpayment;

5 (e) "Person", any natural person, partnership, corporation, association, or other legal  
6 entity;

7 (f) "State", the state of Missouri, any of its agencies, boards, or commissions.

8 (2) (a) Any person who:

9 (i) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment  
10 or approval;

11 (ii) Knowingly makes, uses, or causes to be made or used, a false record or statement  
12 material to a false or fraudulent claim;

13 (iii) Conspires to commit a violation of any provision of this subsection;

14 (iv) Has possession, custody, or control of property or money used, or to be used, by the  
15 state and, knowingly delivers, or causes to be delivered, less than all of that money or property;

16 (v) Is authorized to make or deliver a document certifying receipt of property used, or to  
17 be used, by the state and, intending to defraud the state, makes or delivers the receipt without  
18 completely knowing that the information on the receipt is true;

19 (vi) Knowingly buys, or receives as a pledge of an obligation or debt, public property  
20 from an officer or employee of the state who lawfully may not sell or pledge property;

21 (vii) Knowingly makes, uses, or causes to be made or used, a false record or statement  
22 material to an obligation to pay or transmit money or property to the state or knowingly conceals  
23 or knowingly and improperly avoids or decreases an obligation to pay or transmit money or  
24 property to the state;

25  
26 is liable to the state for a civil penalty of not less than five thousand dollars and not more than ten  
27 thousand dollars, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28  
28 U.S.C. 2461, plus three times the amount of damages which the state sustains because of the act  
29 of that person.

30 (b) If the court finds that:

31 (i) The person committing the violation of this section furnished officials of the state  
32 responsible for investigating false claims violations with all information known to such person  
33 about the violation within thirty days after the date on which the defendant first obtained the  
34 information;

35 (ii) Such person fully cooperated with any investigation of such violation; and

36 (iii) At the time such person furnished the state with the information about the violation,

1 no criminal prosecution, civil action, or administrative action had commenced with respect to  
2 such violation, and the person did not have actual knowledge of the existence of an investigation  
3 into such violation;

4  
5 the court may assess not less than two times the amount of damages which the state sustains  
6 because of the act of the person. A person violating this section shall also be liable to the state for  
7 the costs of a civil action brought to recover any such penalty or damages.

8 (c) Any information furnished under subdivisions (1) to (3) of subsection 3 of this section  
9 shall be exempt from disclosure under 5 U.S.C. 552 and chapter 610.

10 (d) This section does not apply to claims, records, or statements made under the Internal  
11 Revenue Code of 1986, as amended.

12 (3) (a) The attorney general diligently shall investigate a violation under section 537.802.  
13 If the attorney general finds that a person has violated or is violating section 537.802, the attorney  
14 general may bring a civil action under this section against the person.

15 (b) A person may bring a civil action for a violation of section 537.802 for the person and  
16 for the state. The action shall be brought in the name of the state. The action may be dismissed  
17 only if the court and the attorney general give written consent to the dismissal and their reasons  
18 for consenting.

19 (c) A copy of the complaint and written disclosure of substantially all material evidence  
20 and information the person possesses shall be served on the state under the attorney general. The  
21 complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be  
22 served upon the defendant until the court so orders. The attorney general may elect to intervene  
23 and proceed with the action within sixty days after it receives both the complaint and the material  
24 evidence and information.

25 (d) The attorney general may, for good cause shown, move the court for an extension of  
26 the time during which the complaint remains under seal under subsection 3 of this section. Any  
27 such motion may be supported by affidavits or other submissions in camera.

28 (e) Before expiration of the sixty-day period or any extensions obtained under subsection  
29 4 of this section, the attorney general shall:

30 (i) Proceed with the action, in which case the action shall be conducted by the attorney  
31 general; or

32 (ii) Notify the court that it declines to take over the action, in which case the person  
33 bringing the action shall have the right to conduct the action.

34 (f) When a person brings an action under this section, no person other than the attorney  
35 general shall intervene or bring a related action based on the facts underlying the pending action.

36 (4) (a) If the attorney general elects to proceed with the action authorized by section

1 537.806, he or she shall have the primary responsibility for prosecuting the action, and shall not  
2 be bound by an act of the person bringing the action. Such person shall have the right to continue  
3 as a party to the action, subject to the limitations set forth in subsection 2 of this section.

4 (b) The attorney general may dismiss the action notwithstanding the objections of the  
5 person initiating the action if the person has been notified by the attorney general of the filing of  
6 the motion and the court has provided the person with an opportunity for a hearing on the motion.

7 (c) The attorney general may settle the action with the defendant notwithstanding the  
8 objections of the person initiating the action if the court determines, after a hearing, that the  
9 proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a  
10 showing of good cause, such hearing may be held in camera.

11 (d) Upon a showing by the attorney general that unrestricted participation during the  
12 course of the litigation by the person initiating the action would interfere with or unduly delay the  
13 attorney general's prosecution of the case, or would be repetitious, irrelevant, or is for purposes of  
14 harassment, the court may, in its discretion, impose limitations on the person's participation, such  
15 as:

16 (i) Limiting the number of witnesses the person may call;

17 (ii) Limiting the length of the testimony of witnesses;

18 (iii) Limiting the person's cross-examination of witnesses; or

19 (iv) Otherwise limiting the participation by the person in the litigation.

20 (e) Upon a showing by the defendant that unrestricted participation during the course of  
21 the litigation by the person initiating the action would be for purposes of harassment, or would  
22 cause the defendant undue burden or unnecessary expense, the court may limit the participation by  
23 the person in the litigation.

24 (f) If the attorney general elects not to proceed with the action, the person who initiated  
25 the action shall have the right to conduct the action. If the attorney general so requests, it shall be  
26 served with copies of all pleadings filed in the action and shall be supplied with copies of all  
27 deposition transcripts at the attorney general's expense. When a person proceeds with the action,  
28 the court, without limiting the status and rights of the person initiating the action, may  
29 nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

30 (g) Whether or not the attorney general proceeds with the action, upon a showing by the  
31 attorney general that certain actions of discovery by the person initiating the action would interfere  
32 with the attorney general's investigation or prosecution of a criminal or civil matter arising out of  
33 the same facts, the court may stay such discovery for a period of not more than sixty days. Such  
34 showing shall be conducted in camera. The court may extend the sixty-day period upon a further  
35 showing in camera that the attorney general has pursued the criminal and civil investigation or  
36 proceedings with reasonable diligence and any proposed discovery in the civil action will interfere

1 with the ongoing criminal or civil investigation or proceedings.

2 (h) Notwithstanding claims authorized under section 537.806, the attorney general may  
3 elect to pursue its claim through any alternate remedy available to the attorney general, including  
4 any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy  
5 is pursued in another proceeding, the person initiating the action under section 537.806 shall have  
6 the same rights in such proceeding as such person would have had if the action had continued  
7 under this section. Any finding of fact or conclusion of law made in such other proceeding that  
8 has become final shall be conclusive on all parties to an action under this section. For purposes of  
9 the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal  
10 to the appropriate court, if all time for filing such an appeal with respect to the finding or  
11 conclusion has expired, or if the finding or conclusion is not subject to judicial review.

12 (5) (a) If the attorney general proceeds with an action brought by a person under section  
13 537.806, such person shall receive at least fifteen percent but not more than twenty-five percent of  
14 the proceeds of the action or settlement of the claim, depending upon the extent to which the  
15 person substantially contributed to the prosecution of the action. Where the action is one which  
16 the court finds to be based primarily on disclosures of specific information, other than information  
17 provided by the person bringing the action, relating to allegations or transactions in a criminal,  
18 civil, or administrative hearing, in a congressional, administrative, or Government Accounting  
19 Office or state agency report, hearing, audit, or investigation, or from the news media, the court  
20 shall award such sums as it considers appropriate, but in no case more than ten percent of the  
21 proceeds, taking into account the significance of the information and the role of the person  
22 bringing the action in advancing the case to litigation. Any payment made to a person under the  
23 first or second sentence of this subsection shall be made from the proceeds. Any such person  
24 shall also receive an amount for reasonable expenses which the court finds to have been  
25 necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs  
26 shall be awarded against the defendant.

27 (b) If the attorney general does not proceed with an action brought by a person under  
28 section 537.806, the person bringing the action or settling the claim shall receive an amount which  
29 the court decides is reasonable for collecting the civil penalty and damages. The amount shall not  
30 be less than twenty-five percent and no more than thirty percent of the proceeds of the action or  
31 settlement and shall be paid out of such proceeds. Such person shall also receive an amount for  
32 reasonable expenses which the court finds to have been necessarily incurred, plus reasonable  
33 attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the  
34 defendant.

35 (c) Whether or not the attorney general proceeds with the action, if the court finds that the  
36 action was brought by a person who planned and initiated the violation of section 537.804 upon

1 which the action was brought, then the court may, to the extent the court considers appropriate,  
2 reduce the share of the proceeds of the action which the person would otherwise receive under  
3 subsection 1 or 2 of this section, taking into account the role of that person in advancing the case  
4 to litigation and any relevant circumstances pertaining to the violation. If the person bringing the  
5 action is convicted of criminal conduct arising from his or her role in the violation of section  
6 537.804, that person shall be dismissed from the civil action and shall not receive any share of the  
7 proceeds of the action. Such dismissal shall not prejudice the right of the attorney general to  
8 continue the action.

9 (d) If the attorney general does not proceed with the action and the person bringing the  
10 action conducts the action, the court may award to the defendant its reasonable attorneys' fees and  
11 expenses if the defendant prevails in the action and the court finds that the claim of the person  
12 bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of  
13 harassment.

14 (e) A person other than the attorney general shall not bring an action under section  
15 537.806 that is based on allegations or transactions that are the subject of a civil suit or on  
16 administrative proceeding in which the state or the federal government is already a party. The  
17 court shall dismiss any such action.

18 (f) No court shall have jurisdiction over an action under section 537.806 based upon the  
19 public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a  
20 congressional, state legislative, administrative or Government Accounting Office report, hearing,  
21 audit, or investigation, or the news media, unless the action is brought by the attorney general or  
22 the person bringing the action is an original source of the information. For purposes of this  
23 subsection "original source" means an individual who has direct and independent knowledge of  
24 the information on which the allegations are based and voluntarily provided the information to the  
25 attorney general before filing an action under section 537.806 which is based on the information.

26 (g) The state shall not be liable for any expenses which a person incurs in bringing an  
27 action under section 537.806.

28 (6) (a) A civil action brought under section 537.806 may not be brought:

29 (i) More than six years after the date on which the violation of section 537.804 is  
30 committed; or

31 (ii) More than three years after the date when facts material to the right of action are  
32 known or reasonably should have been known by the state official charged with the responsibility  
33 to act in the circumstances, but in no event more than ten years after the date on which the  
34 violation is committed, whichever occurs last.

35 (b) If the attorney general elects to intervene and proceed with an action brought under  
36 section 537.806, the state may file its own complaint or amend the complaint of a person who has

1 brought an action under section 537.806 to clarify or add detail to the claims in which the state is  
2 intervening and to add any additional claims with respect to which the state contends it is entitled  
3 to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing  
4 date of the complaint of the person who originally brought the action, to the extent that the claim  
5 of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set  
6 forth, in the prior complaint of that person.

7 (c) In any action brought under section 537.806, the person or the attorney general shall  
8 be required to prove all essential elements of the cause of action, including damages, by a  
9 preponderance of evidence.

10 (d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure,  
11 or the Federal Rules of Evidence, a final judgment rendered in favor of the state in any criminal  
12 proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of  
13 guilty or nolo contendere, shall estop the defendant from denying the essential elements of the  
14 offense in any action which involves the same transaction as in the criminal proceeding and which  
15 is brought under section 537.804.

16 (e) Any action brought under section 537.806 may be brought in any circuit court in  
17 which the defendant or, in the case of multiple defendants, any one defendant can be found,  
18 resides, transacts business, or in which any act proscribed by section 537.806 occurred. In  
19 addition, the federal district courts shall have jurisdiction over any action brought under the laws  
20 of any state or local government if the action arises from the same transaction or occurrence as an  
21 action brought under 31 U.S.C. 3730.

22 (f) With respect to the state or any local government that is named as a co-plaintiff with  
23 the United States in an action brought under section 537.806, a seal on the action ordered by the  
24 court under subsection 3 of section 537.806 shall not preclude the state or the person bringing the  
25 action from serving the complaint, any other pleadings, or the written disclosure of substantially  
26 all material evidence and information by the person bringing the action on the law enforcement  
27 authorities that are authorized under state law or local ordinance to investigate and prosecute such  
28 actions on behalf of the state or local government, except that such seal applies to the law  
29 enforcement authorities so served to the same extent as the seal applies to the other parties in the  
30 action.

31 (7) (a) Whenever the attorney general, or a designee, for the purposes of this section, has  
32 reason to believe that any person may be in possession, custody, or control of any documentary  
33 material or information relevant to a public fraud prevention act investigation, the attorney  
34 general, or a designee, may, before commencing a civil proceeding under section 537.806 or  
35 making an election under section 537.808, issue in writing and cause to be served upon such  
36 person, a civil investigative demand requiring such person:

- 1 (i) To produce such documentary material for inspection and copying;  
2 (ii) To answer in writing written interrogatories with respect to such documentary material  
3 or information;  
4 (iii) To give oral testimony concerning such documentary material or information; or  
5 (iv) To furnish any combination of such material, answers, or testimony.

6  
7 The attorney general may delegate the authority to issue civil investigative demands under this  
8 subsection. Whenever a civil investigative demand is an express demand for any product of  
9 discovery, the attorney general shall cause to be served, in any manner authorized by this section,  
10 a copy of such demand upon the person from whom the discovery was obtained and shall notify  
11 the person to whom such demand is issued of the date on which such copy was served. Any  
12 information obtained by the attorney general or a designee of the attorney general under this  
13 section may be shared with any qui tam relator if the attorney general or designee determine it is  
14 necessary as part of any public fraud prevention act investigation.

15 (b) Each civil investigative demand issued under subsection 1 of this section shall state  
16 the nature of the conduct constituting the alleged violation of the public fraud prevention act  
17 which is under investigation, and the applicable provision of law alleged to be violated.

18 (c) If such demand is for the production of documentary material, the demand shall:

19 (i) Describe each class of documentary material to be produced with such definiteness and  
20 certainty as to permit such material to be fairly identified;

21 (ii) Prescribe a return date for each such class which will provide a reasonable period of  
22 time within which the material so demanded may be assembled and made available for inspection  
23 and copying; and

24 (iii) Identify the public fraud prevention act investigator to whom such material shall be  
25 made available.

26 (d) If such demand is for answers to written interrogatories, the demand shall:

27 (i) Set forth with specificity the written interrogatories to be answered;

28 (ii) Prescribe the dates at which time answers to written interrogatories shall be submitted;  
29 and

30 (iii) Identify the public fraud prevention act investigator to whom such answers shall be  
31 submitted.

32 (e) If such demand is for the giving of oral testimony, the demand shall:

33 (i) Prescribe a date, time, and place at which oral testimony shall be commenced;

34 (ii) Identify a public fraud prevention act investigator who shall conduct the examination  
35 and the custodian to whom the transcript of such examination shall be submitted;

36 (iii) Specify that such attendance and testimony are necessary to the conduct of the



1 investigation;

2 (iv) Notify the person receiving the demand of the right to be accompanied by an attorney  
3 and any other representative; and

4 (v) Describe the general purpose for which the demand is being issued and the general  
5 nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the  
6 demand.

7 (f) Any civil investigative demand issued under this section which is an express demand  
8 for any product of discovery shall not be returned or returnable until twenty days after a copy of  
9 such demand has been served upon the person from whom the discovery was obtained.

10 (g) The date prescribed for the commencement of oral testimony pursuant to a civil  
11 investigative demand issued under this section shall be a date which is not less than seven days  
12 after the date on which demand is received, unless the attorney general or designee determines  
13 that exceptional circumstances are present which warrant the commencement of such testimony  
14 within a lesser period of time.

15 (h) The attorney general shall not authorize the issuance under this section of more than  
16 one civil investigative demand for oral testimony by the same person unless the person requests  
17 otherwise or unless the attorney general, after investigation, notifies that person in writing that an  
18 additional demand for oral testimony is necessary.

19 (8) (a) Any employee, contractor, or agent shall be entitled to all relief necessary to make  
20 that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged,  
21 demoted, suspended, threatened, harassed, or in any other manner discriminated against in the  
22 terms and conditions of employment because of lawful acts done by the employee, contractor, or  
23 agent on behalf of the employee, contractor, or agent or associated others in furtherance of other  
24 efforts to stop one or more violations of section 537.804.

25 (b) Relief under subsection (a) of this subsection (8) shall include reinstatement with the  
26 same seniority status that employee, contractor, or agent would have had but for the  
27 discrimination, two times the amount of back pay, interest on the back pay, and compensation for  
28 any special damages sustained as a result of the discrimination, including litigation costs and  
29 reasonable attorneys' fees. An action under this subsection (8) may be brought in the appropriate  
30 court for the relief provided in this subsection."; and

31  
32 Further amend said bill, Section B, Pages 17-18, Lines 2 and 4, by inserting the words,  
33 “subsections 1 through 8 of” after the words, “enactment of”; and

34  
35 Further amend said bill by amending the title, enacting clause, and intersectional references  
36 accordingly.